

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Marco Crane & Rigging Company,

10 Plaintiff,

11 v.

12 Greenfield Products LLC, et al.,

13 Defendants.  
14

No. CV-17-01836-PHX-GMS

**AMENDED JUDGMENT**

15  
16 **BACKGROUND**

17 On appeal, the Ninth Circuit reversed this Court's determination that under the facts  
18 of this case, Plaintiff could have been comparatively negligent as defined by state statute  
19 without being contributorily negligent and that such comparative negligence could reduce  
20 the amount of the products liability award. The Ninth Circuit thus vacated the reduction  
21 in damages on the product liability claim resulting from the jury's allocation of  
22 comparative fault to the Plaintiff and, further, this Court's denial of Marco Crane's motion  
23 for prejudgment interest on that amount. It further instructed this Court to "award interest  
24 on the portion of the jury's strict-liability award that represents liquated damages and to  
25 determine (a) the date from which interest should begin to accrue on that portion of the  
26 award and (b) the applicable interest rate under Arizona Revised Statutes section 44-1201."  
27 (Doc. 260-1 at 6.) It also directed this Court to determine the rate of interest that would  
28 accrue to the unliquidated part of the jury award upon the entry of the verdict (Doc. 207)

1 on October 23, 2020.

2 **I. Comparative Fault: Damages Award on the Products Liability Claim.**

3 The jury awarded Marco Crane \$603,523.67 on its products liability claim. In  
4 accordance with the instruction of the Court of Appeals, this Court, therefore, revises its  
5 judgment on that claim to \$603,523.67.

6 **II. Prejudgment Interest**

7 **A. Products Liability Claim**

8 In its decision, the Ninth Circuit noted that “the parties appear to agree that Marco  
9 Crane asserted only \$323,935.06 in unliquidated damages on the strict-liability claim.”  
10 (Doc. 260-1 at 6.) Therefore, “the remainder of the award would represent liquidated  
11 damages on which Marco Crane would be entitled to prejudgment interest.” (Doc. 260-1  
12 at 6.) Of course, if this constitutes an actual determination by the appellate panel, this  
13 Court is obliged to implement it; but the Court does not read it as such. The language in  
14 which the Circuit has couched the observation suggests that it is not a determination of the  
15 panel but only a statement as to the apparent facts. Further, the Circuit remanded to this  
16 Court to determine what that amount was.

17 Yet, on remand, Greenfield asserts that there never was any such agreement about  
18 the amount of Marco Crane’s unliquidated damages. This Court, as well, on its admittedly  
19 incomplete review of the record, can find no such agreement. Though Marco Crane, in its  
20 Reply, had the opportunity to address Greenfield’s denial of any agreement as to liquidated  
21 claims, it does not do so. Instead, Marco Crane claims a right to prejudgment interest on  
22 the entire amount of the corrected award, \$734,983.38—coming from \$603,523.67 on the  
23 products claim and \$131,459.71 on its implied warranty claim.

24 This argument is based on speculation that the jury intended to award total damages  
25 of \$1,058,813.46—all of Marco Crane’s claimed damages—at trial instead of what it  
26 actually awarded: \$734,983.38. Marco Crane speculates that the jury arrived at the  
27 \$603,523.67 amount by awarding both Marco Crane’s alleged products liability damages  
28 (\$927,353.75) and warranty damages (\$131,459.71) on the products liability claim and

1 then reducing this amount by the percentage of the comparative fault that it attributed to  
2 Marco Crane on the products liability claim (43%).<sup>1</sup>

3 There are several problems with this argument. First, this court is prohibited from  
4 speculating about a jury's thought process in arriving at a damages award in the absence  
5 of special interrogatories. *Porterfield v. Burlington N. Inc.*, 534 F.2d 142, 147 (9th Cir.  
6 1976) (holding that "[w]e cannot, by way of speculation, pierce the general verdict to draw  
7 the conclusions contended for by [the appellant]."); *see also Asdale v. Int't Game Tech.*,  
8 549 Fed. App'x. 611, 614 (9th Cir. 2013) (holding that "because the jury used a general  
9 verdict form we cannot speculate about the jury's thought process.").

10 Second, even were the Court to engage in speculation, it would be obliged to follow  
11 the presumption that the jury followed the court's instructions. *CSX Transp. Inc., v.*  
12 *Hensley*, 556 U.S. 838, 841 (2009) (holding that "in all cases, juries are presumed to follow  
13 the court's instructions."); *United States v. Reyes*, 660 F.3d 454, 468 (9th Cir. 2011)  
14 (holding that "jurors are presumed to follow the court's instructions."). And, for the jury  
15 to have done what Marco Crane speculates, it would have had to ignore two separate  
16 instructions of the Court—one of which was delivered twice.

17 The Court twice instructed the jury that it should determine the actual damages  
18 involved on the products liability claim, and if it found that Marco Crane was  
19 comparatively negligent, it should not deduct its percentage of fault from those damages.  
20 *See, e.g.*, (Tr. at 629 ("The Court will later reduce the damages awarded to the plaintiff by  
21 the percentage of any fault you have assigned to the plaintiff.")); (Tr. at 634 ("[I]f you  
22 determine that plaintiff is partially at fault, then you need to put down the percentage of  
23 fault attributable to the plaintiff and the percentage of the fault attributable to the defendant.

---

24  
25 <sup>1</sup> *See* Doc. 264 at 3 n.2 ("As discussed above, Marco Crane presented \$603,418.69 in  
26 liquidated damages due to the loss of the dolly, cleanup costs, and repair costs on its strict  
27 liability claim, along with \$323,935.06 in lost profits. The total for the strict liability claim  
28 was \$927,353.75. The jury also awarded all of Marco Crane's damages on its warranty  
claim, \$131,459.71. When one adds \$927,353.75 to \$131,459.71, the total damage figure  
is \$1,058,813.46."); *Id.* at 4 ("If one multiplies \$1,058,813.46 by .57, the resultant figure  
is exactly the strict liability award: \$603,523.67.").

1 And that has to total 100 percent. Do not reduce the amount of the damages by the percent  
2 attributable. If you find that any fault is attributable to the plaintiff, do not reduce the  
3 amount of damages by that percentage. The Court will do it at a later time. Any Questions  
4 about that?”).) Plaintiff’s speculation impermissibly posits that the jury ignored the Court’s  
5 instructions not to deduct any amount from the damages on the products liability claim to  
6 account for any fault by Marco Crane.

7 Further, the Court instructed the jury that Greenfield was not making a claim that  
8 Marco Crane was comparatively negligent on Marco Crane’s warranty claim. (Tr. at 635  
9 (“The defendant is not asserting that the plaintiff is comparatively at fault on the breach of  
10 implied warranty claim. The plaintiff—the defendant is only asserting that as to the  
11 products liability claim. Do you understand that?”).) Under Marco Crane’s speculation,  
12 the jury reduced all of Marco Crane’s claimed damages by its comparative fault (43%),  
13 including its claimed damages on its implied warranty claim. But if it did that, it also,  
14 inexplicably, again awarded Marco Crane the full amount of its claimed damages  
15 (\$131,459.71) on the implied warranty claim as well as awarding it the amount of its  
16 claimed damages on the implied warranty claim on the products liability claim reduced by  
17 the amount of Marco’s comparative fault. Marco Crane thus speculates that the jury  
18 intended to award twice the amount of damages Marco Crane claimed on its implied  
19 warranty claim—once for the whole amount of the damages, and once for the amount of  
20 the damages minus the percentage of fault attributed by the jury to Marco Crane on its  
21 products liability claim. Such double-counting in the award would require vacating, if not  
22 otherwise adjusting downward the jury award. This only serves to underline the need for  
23 the rule prohibiting speculation about the basis of a jury’s damages award.

24 Nor does Marco Crane offer any other evidence that it claimed the amount of  
25 \$603,523.67 or any separate amounts that would aggregate to that amount from Greenfield  
26 before trial. Under Arizona law, prejudgment interest begins when the creditor provides  
27 the debtor with “sufficient information and supporting data so as to enable the debtor to  
28 ascertain the amount owed.” *Homes & Son Constr. Co. Inc. v. Bolo Corp.*, 526 P.2d 1258,

1 1261 (Ariz. Ct. App. 1974). Further, “prejudgment interest generally accrues from the date  
 2 of demand, not from the date of loss.” *Alta Vista Plaza, Ltd. v. Insulation Specialists Co.*,  
 3 919 P.2d 176, 178 (Ariz. Ct. App. 1995). But Marco Crane never establishes that it made  
 4 a demand on Greenfield prior to trial for identifiable amounts that aggregate to the damages  
 5 the jury awarded on the products liability claim—there is no mention of \$603,523.67 worth  
 6 of demands in its briefing on remand or elsewhere. Thus, it would not have been possible  
 7 for Greenfield to “calculate exactly the amount of damages without relying on the opinion  
 8 or discretion of a . . . jury.” *Scottsdale Ins. Co. v. Cendejas*, 220 Ariz. 281, 288, 205 P.3d  
 9 1128, 1135 (Ct. App. 2009). Thus, the principal award on which Marco Crane seeks  
 10 prejudgment interest was not liquidated, and, therefore, under Arizona law, no prejudgment  
 11 interest can be awarded on the products liability claim before the date of the jury’s verdict  
 12 on October 23, 2020.

### 13 **B. Implied Warranty Claim**

14 The Court previously awarded some prejudgment interest on the implied warranty  
 15 claim. It awarded prejudgment interest against the \$23,481.36 principal amount expended  
 16 for testing and modifying the dolly, but it did not award prejudgment interest against the  
 17 \$107,978.35 balance for lost profits because that amount was based on conservative  
 18 estimation and averaging, not a precise calculation. (Doc. 226 at 5.) Under the Ninth  
 19 Circuit’s decision, neither of these interest awards is subject to change. When it awarded  
 20 prejudgment interest on the award of \$23,481.36, this Court also determined the  
 21 appropriate rate of interest under the statute due to the nature of the obligation involved.  
 22 That rate was ten percent. (Doc. 226 at 6.) Thus, interest on \$23,481.36 of the total  
 23 judgment continues to accrue at ten percent per annum. Such a rate amounts to about \$6.43  
 24 per day. Pursuant to the Court’s previous order, this interest will run from March 14, 2019,  
 25 until the date the jury rendered its verdict, October 23, 2020.<sup>2</sup>

---

26  
 27 <sup>2</sup> “The general rule is that when an appellate court reverses a judgment of the district court  
 28 and directs that a money judgment in favor of a claimant be entered upon remand,  
 prejudgment interest runs through the date of the newly-entered judgment.” *Am. Tel. &  
 Tel. Co. v. Uni. Comp. Sys., Inc.*, 98 F.3d 1206, 1209 (9th Cir. 1996). There is, “however,  
 [] an exception to this rule . . . when a legally sufficient determination of damages had been

### C. Total Unliquidated Award

Finally, the Ninth Circuit’s memorandum decision also states that “Marco Crane is entitled to prejudgment interest on the unliquidated portion of the jury’s award from the date of the verdict because any “obligation [usually] becomes liquidated on the rendition of a verdict in a sum certain.” The Court interprets this portion of the Ninth Circuit’s order as awarding Marco Crane prejudgment interest on the unliquidated portion of the jury’s award at the time it became liquidated, October 23, 2020, through the date of this Amended Judgment.

The applicable interest rate is determined by the nature of the defendant’s obligation to pay the liquidated damages at issue. A.R.S. § 44-1201(A), (B). In Arizona, prejudgment interest is awarded at 10% under subsection (A), on a loan, “money lent at interest,” indebtedness “something (as an amount of money) that is owed,” or other obligation, “things of the same nature or class as ‘loan’ and ‘indebtedness.’” *Metzler v. BCI Coca-Cola Bottling Co. of L.A., Inc.*, 235 Ariz. 141, 145–46 (2014). Alternatively, the prejudgment interest in subsection (B) is used when the amount “depends on a judgment for its existence.” *Id.* at 146. To determine the applicable interest rate, “courts must look to the fundamental nature of the underlying obligation to determine which subsection applies.” *Id.* at 390.

In previously making this determination as it pertained to the liquidated amount spent on modifications and testing done on the dolly prior to use, the Court determined that ten percent was the appropriate rate of interest. It did so because the amount was necessary to make a product usable that was purchased at a bargained-for price with the assumption that the product would be usable. Thus, in its December Order, this Court applied subsection (A)’s interest rate to Marco Crane’s liquidated damages on part of its breach of implied warranty claim because that “cost [was] akin to a debt because Defendant was made at the time of some prior judgment, which the judgment upon remand essentially reinstates.” *Id.* This exception is applicable here: the Court made a legally sufficient determination with respect to the liquidated damages on the implied warranty claim that was unchanged by the Ninth Circuit’s order. Additionally, in its Brief, Marco Crane expressed its present understanding that this prejudgment interest ran “from March 14, 2019, through the date of the verdict, October 23, 2020.” (Doc. 264 at 4.)

1 obligated to pay this cost pursuant to the contract.” (Doc. 266 at 6.)

2       However, Greenfield is obligated to pay the costs of Marco Crane’s damages on its  
3 strict liability claim and the balance of the implied warranty claim pursuant to the jury’s  
4 verdict. Consider, for example, that Marco Crane’s damages on its strict liability claim  
5 arise from the loss of the dolly, cleanup costs, and crane repair costs, and lost profit  
6 calculations on both the implied warranty and product liability claims. Unlike costs that  
7 accrue when a party defaults on a debt or a loan obligation, Greenfield did not become  
8 obligated to pay these costs because of any pre-existing legal arrangement with Marco  
9 Crane that is analogous to a loan or “general indebtedness.” In fact, Greenfield would have  
10 no independent legal obligation to pay Marco Crane’s liquidated damages but-for the  
11 Court’s judgment enforcing the jury’s verdict. Thus, any prejudgment interest on this  
12 award is “interest on any judgment,” which, under subsection (B), is set at a rate that is  
13 “the lesser of ten percent per annum or at a rate per annum that is equal to one per cent plus  
14 the prime rate as published by the board of governors of the federal reserve system in  
15 statistical release H.15 or any publication that may supersede it on the date that the  
16 judgment is entered.” A.R.S. § 44-1201(B). On October 23, 2020, the prime rate was  
17 3.25%,<sup>3</sup> making the applicable interest rate on amended judgment indebtedness 4.25% per  
18 annum.

19       Accordingly, the cost associated with the balance of the damages on Marco Crane’s  
20 claims (\$711,502.02) is not akin to a debt, and the interest rate identified in A.R.S.  
21 § 44-1201(B) applies 1% plus the prime rate of 3.25%, i.e., 4.25%, from the date of the  
22 judgment, October 23, 2020, until the date of this Amended Judgment. This amount equals  
23 approximately \$82.85 per day. Under state law, this interest does not compound. *Metzler*,  
24 235 Ariz. 141, 146 (2014) (“[T]he statute does not contemplate or provide for compound  
25 interest.” (citing *Westberry v. Reynolds*, 134 Ariz. 29, 34 (App. 1982) (holding that prior  
26 version of § 44–1201(A) mandates simple interest, not compound interest, for any legal  
27 indebtedness)).

---

28       <sup>3</sup> Selected Interest Rates, Fed. Rsrv., <https://www.federalreserve.gov/releases/h15/>.



**CONCLUSION**

For the reasons above, as of October 23, 2020, Marco Crane was entitled to a total Amended Judgment of \$734,983.38. Marco Crane is further awarded prejudgment interest on \$23,481.36 of that amount at a rate of ten percent (10%) per annum beginning on March 4, 2019 (this amounts to \$6.43 per day running from March 4, 2019, to October 23, 2020). Marco Crane is also awarded prejudgment interest on the unliquidated balance of its award, i.e., \$711,502.02, at a rate of 4.25% per annum beginning on October 23, 2020 (this amounts to \$82.85 per day running from October 23, 2020, to the date of this Amended Judgment).

Accordingly,

**IT IS THEREFORE ORDERED** that Plaintiff is awarded \$603,523.67 on its product liability claim, which, when combined with the \$131,459.71 on its implied warranty claim, results in a total Amended Judgment of \$734,983.38.

**IT IS FURTHER ORDERED GRANTING** Plaintiff prejudgment interest on \$23,481.36 of its implied warranty award, at the rate of 10% per annum from March 4, 2019, to October 23, 2020 (\$6.43 a day).

**IT IS FURTHER ORDERED GRANTING** Plaintiff prejudgment interest on the remaining \$711,502.02 of judgment at the rate of 4.25% per annum from October 23, 2020, to the date of Amended Judgment (\$82.85 a day).

Dated this 11th day of January, 2023.

  
G. Murray Snow  
Chief United States District Judge